

FACTUAL HISTORY

On March 18, 2010 appellant, then a 64-year-old aircraft attendant supervisor, filed an occupational disease claim alleging that he sustained hearing loss in both ears due to factors of his federal employment. The date of his last work-related noise exposure was January 3, 2007, the date of his retirement.²

By letter dated March 25, 2010, the Office advised appellant of the evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided. The employing establishment provided personnel records, annual audiograms and a chronological record of medical care for the period August 15, 1983 through March 7, 2006.

The Office referred appellant, together with a statement of accepted facts, to Dr. William Carl Smith, a Board-certified otolaryngologist, for a second opinion evaluation. In a May 24, 2010 report, Dr. Smith diagnosed bilateral high frequency sensorineural hearing loss, which he opined was due to noise exposure in appellant's federal employment. Audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 15, 20 and 45 decibels; left ear 40, 30, 30 and 50 decibels. Dr. Smith stated that appellant's hearing loss was in excess of that expected from presbycusis and that workplace exposure was sufficient as to intensity and duration to have caused the loss. He recommended that appellant be provided with hearing aids. According to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) Dr. Smith concluded that appellant had a 0 percent impairment of the right ear and a 20 percent impairment of the left ear.

On June 4, 2010 the Office accepted appellant's claim for a binaural hearing loss, due to workplace exposure to noise.

The Office forwarded Dr. Smith's report to the district medical adviser for review and an impairment rating under the A.M.A., *Guides*. In a June 4, 2010 report, an Office medical adviser concluded that, in accordance with the sixth edition of the A.M.A., *Guides*, appellant had a 20 percent monaural hearing loss. He found that the date of maximum medical improvement was May 24, 2010, the date of the audiometric testing obtained by Dr. Smith.

By decision dated August 19, 2010, the Office granted appellant a schedule award for 20 percent monaural hearing loss. The period of the award was from May 24 through August 4, 2010 (10.4 weeks).

LEGAL PRECEDENT

The schedule award provision of the Act and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² The record establishes that the employer had a hearing conservation program in which appellant underwent annual audiometric testing. See *Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987).

loss or loss of use, of scheduled members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (6th ed. 2009), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

ANALYSIS

The Board finds that appellant does not have more than 20 percent hearing loss in his left ear for which he received a schedule award.

Dr. Smith, the Office referral physician, concluded that appellant sustained bilateral high frequency sensorineural hearing loss, which he opined was due to noise exposure in her federal employment. The Board finds that Dr. Smith's report conforms to applicable criteria and constitutes the weight of the medical evidence. The Office medical adviser reviewed Dr. Smith's report and audiometric findings and applied the Office's standardized procedures to the results of the September 29, 2009 audiogram to find that appellant had a 20 percent monaural hearing loss. Testing at 500, 1,000, 2,000 and 3,000 cycles per seconds reflected decibel losses of 15, 15, 20 and 45 respectively in the right ear, for a total of 95 decibels, and an average hearing loss of 24 decibels. The average loss of 24 decibels is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the right ear. Testing in the left ear recorded decibel losses of 40, 30, 30 and 50 respectively, for a total loss of 150 decibels and an average loss for the left ear of 38 decibels. The average loss of 38 decibels is reduced by the fence of 25 decibels to equal 13, which when multiplied by the established factor of 1.5, results in 20 percent impairment of the left ear. The Board finds that the Office medical adviser correctly applied the Office's standards to the findings of the

³ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

September 29, 2009 audiogram and properly concluded that appellant had a 20 percent ratable impairment of the left ear.⁵

Appellant contends that the period of the schedule award was incorrect because his hearing loss occurred a long time prior to the filing of his claim. His contention is not supported by terms of the Act. A schedule provides for payment of compensation for a specific number of weeks as prescribed by the statute.⁶ Section 8107(c)(13)(A) of the Act provides that for 100 percent loss of hearing in one ear, a claimant is entitled to 52 weeks of compensation.⁷ As appellant sustained 20 percent monaural hearing loss, he is entitled to 10.4 weeks of compensation, as the Office awarded. He is entitled to no greater award under the Act.

As to the date of maximum medical improvement, the Board has held that such determination is based on probative medical opinion and is usually considered to be the date of evaluation by an examining physician.⁸ The Board has noted a reluctance to find a date of maximum medical improvement that is retroactive to a schedule award, as retroactive awards often result in payment of less compensation benefits.⁹ The Office medical adviser found maximum medical improvement to be May 24, 2010, the date Dr. Smith examined appellant and obtained audiometric test results relied upon for rating the extent of his hearing loss.

CONCLUSION

The Board finds that appellant has no more than 20 percent monaural hearing loss for which he received a schedule award.

⁵ *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁶ 5 U.S.C. § 8107.

⁷ *Id.* at § 8107(c)(13)(A).

⁸ *See D.R.*, 57 ECAB 720 (2006).

⁹ *Id.* *See James E. Earle*, 51 ECAB 567 (2000).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board